

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MARK MEISINGER,	)	CASE NO. _____
	)	
Plaintiff,	)	
	)	
v.	)	<b>COMPLAINT AND DEMAND</b>
	)	<b>FOR JURY TRIAL</b>
SOUTHWEST IOWA	)	
RENEWABLE ENERGY, LLC	)	
	)	
Defendant.		

COMES NOW Mark Meisinger, Plaintiff, and for his Complaint against Southwest Iowa Renewable Energy (hereinafter "SIRE, LLC) states and alleges as follows:

**PARTIES AND JURISDICTION**

1. Mark Meisinger is a resident of Plattsmouth, Cass County, Nebraska.
2. SIRE, LLC is an Iowa dry-mill grain processing company and ethanol plant headquartered in Council Bluffs, Iowa.
3. This Court has jurisdiction over this matter pursuant to *28 U.S.C. §1332* as it is an action between citizens of different states and the amount in controversy, exclusive of interest and cost, exceeds \$75,000.00.
4. Venue is proper in this district as it is a judicial district in which a substantial part of the events giving rise to this claim occurred.

**BACKGROUND**

5. Mark Meisinger is engaged in the business of raising cattle in Cass County, Nebraska. Mark Meisinger operates such business as a sole proprietorship.
6. SIRE, LLC is dry-mill grain processing facility and ethanol plant which produces over 110 million gallons of ethanol per year and over 365,000 tons of Wet and Dried Distillers' Grain.

7. On or about May 30, 2013, Mark Meisinger and SIRE, LLC entered into an oral contract by which SIRE, LLC agreed to sell and Mark Meisinger agreed to purchase a load of Wet Distillers' Grain as feed for Mark Meisinger's cattle herd. The agreed upon purchase price for such load was \$1,012.61.

8. The Wet Distillers' Grain was delivered to Mark Meisinger at his farm in Cass County, Nebraska by a SIRE, LLC employee on or about May 30, 2013.

9. Mark Meisinger began feeding the Wet Distillers' Grain to his cattle on or around May 30, 2013.

10. After feeding several loads of the Wet Distillers' Grain to his cattle, Mark Meisinger noticed that chunks of jagged metal were present on the magnet of his feed wagon through which the feed was mixed. Mark Meisinger inspected the Wet Distillers' Grain and discovered additional metal fragments in the feed.

11. On or around May 30, 2013, Mark Meisinger informed SIRE, LLC of the presence of the metal fragments. Mark Meisinger was told by a SIRE, LLC employee, Ms. Kristan Barta, that the company would investigate the situation and "make things right" by delivering a replacement load to him at no cost. SIRE, LLC delivered a replacement load of Wet Distillers' Grain to Mark Meisinger at no cost on or around June 4, 2013.

12. On or around May 31, 2013, Mark Meisinger's cattle which consumed the feed containing metal fragments began dying. In the course of the next several days, twenty-one (21) head of cattle died as result of severed internal organs. Thirty-one (31) other cows in Mark Meisinger's herd survived but became emaciated by the severe internal damage caused by the metal fragments they ingested.

13. On or around June 4, 2013, Ms. Kristan Barta contacted Mark Meisinger and remarked that there recently had been an accident at the SIRE, LLC plant and a conveyor had dropped into the mill. Ms. Barta further remarked that it was lucky that an employee did not lose an arm in the accident.

### **FIRST CAUSE OF ACTION**

#### **Breach of Contract**

14. Mark Meisinger incorporates the allegations of Paragraph 1 through 13, inclusive, as if fully set forth herein.

15. Mark Meisinger and SIRE, LLC formed a contract on or around May 30, 2013 when SIRE, LLC agreed to sell and Mark Meisinger agreed to purchase a load of Wet Distillers' Grain.

16. SIRE, LLC breached its contract with Mr. Meisinger by delivering grain infused with metal fragments.

17. SIRE, LLC's breach actually and foreseeably caused Mark Meisinger to suffer various pecuniary damages in an amount presently undetermined, but in excess of \$394,000.00.

## **SECOND CAUSE OF ACTION**

### **Breach of Contract – Breach of Implied Warranty**

18. Mark Meisinger incorporates his allegations of Paragraphs 1 through 17, inclusive, as if fully set forth herein.

19. SIRE, LLC is a merchant with respect to the Wet Distillers' Grain that it sold to Mark Meisinger on around May 30, 2013.

20. Where a seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods there is an implied warranty that the goods shall be fit for such purposes. *Neb. Rev. St. U.C.C. §2-315*.

21. SIRE, LLC had reason to know that Mr. Meisinger's particular purpose for which the Wet Distillers' Grain was required was to feed Mr. Meisinger's cattle herd. Further, Mr. Meisinger relied on SIRE, LLC's skill and judgment to furnish suitable goods.

22. The Wet Distillers' Grain was not a suitable good as it contained metal fragments.

23. Mark Meisinger gave SIRE, LLC notice of its breach on or around May 30, 2013.

24. SIRE, LLC's breach of its implied warranty was the actual and foreseeable proximate cause of damages to Mark Meisinger in an amount presently undetermined, but in excess of \$394,000.00

WHEREFORE, Plaintiff, Mark Meisinger demands judgment as follows:

(1) Against Defendant, SIRE, LLC for damages to be proven at trial, plus prejudgment interest, reasonable collection costs, and attorney's fees as allowed by law;

- (2) For its Court costs; and
- (3) For such further and other relief as to which it may be entitled.

**PLACE OF TRIAL**

Pursuant to NECiv R. 40.1(b), Plaintiff request that the trial in this matter be held in Omaha, Nebraska.

**JURY DEMAND**

The Plaintiff respectfully requests trial by jury in the above matter.

MARK MEISINGER, Plaintiff

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